



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, 483, 484, 488, 489, and 498

[CMS–1747–CN and CMS–5531–CN]

RINs 0938–AU37 and 0938–AU32

Medicare and Medicaid Programs; CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID–19 Reporting Requirements for Long-Term Care Facilities; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the **Federal Register** on November 9, 2021 titled “Medicare and Medicaid Programs; CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID–19 Reporting Requirements for Long-Term Care Facilities”.

DATES: This correcting document is effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Brian Slater, (410) 786–5229, for home health payment inquiries.

Frank Whelan (410) 786-1302, for provider enrollment inquiries.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2021-23993 of November 9, 2021 (86 FR 62431), there were a number of technical errors that are identified and corrected in this correcting document. The provisions in this correction document are effective as if they had been included in the document that appeared in the November 9, 2021 **Federal Register**.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 62240, we inadvertently included a website address that is not related to Home Health Value Based Purchasing Model.

On pages 62250 and 62251, in our discussion of the functional impairment levels under the Patient-Driven Groupings Model (PDGM), we made typographical errors in an Outcome and Assessment Information Set (OASIS) item number.

On page 62251, we inadvertently omitted a note following the table titled "Table 2: OASIS Points Table for those Items Associated with Increases Resource Use Using a Reduced Set of OASIS Items, CY 2020".

B. Summary of Errors in the Regulations Text

On page 62419, in our amendatory instructions for §424.525, we made an inadvertent error in specifying the revisions to §424.525(a)(3).

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to

provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this final rule correction does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects typographical and technical errors in the CY 2022 HH PPS final rule, but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this final rule correction is intended to ensure that the information in the CY 2022 HH PPS final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2022 HH PPS final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering

our payment methodologies or policies, but rather, we are simply implementing correctly the methodologies and policies that we previously proposed, requested comment on, and subsequently finalized. This final rule correction is intended solely to ensure that the CY 2022 HH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements. Moreover, even if these corrections were considered to be retroactive rulemaking, they would be authorized under section 1871(e)(1)(A)(ii) of the Act, which permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained previously, we believe it would be contrary to the public interest not to implement the corrections in this final rule correction because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2022 HH PPS final rule accurately reflects our policies.

IV. Correction of Errors

In FR Doc. 2021-23993 of November 9, 2021 (86 FR 62240), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 62240, second column, fifth full paragraph, lines 3 through 5, the phrase "<https://share.cms.gov/center/CCSQ/CSG/DIQS/LTC/LTCCOVIDReporting/finalrule/> please visit" is corrected to read "please visit".
2. On page 62250, second column, second full paragraph, line 7, the figure "M1032" is corrected to read "M1033".
3. On page 62251:
 - a. In the Table titled "Table 2: OASIS Points Table for those Items Associated with Increased Resource Use Using a Reduced Set of OASIS Items, CY 2020", last row, first column, the "M1032" is corrected to read "M1033".
 - b. Following the table, after the table note that begins "**Source:** CY 2020" and ends "July

12, 2021”, the table notes are corrected by adding the following:

"Note: For the OASIS items in this table, the association between OASIS points and responses is directly associated with the resource use for each item.”.

B. Correction of Errors in the Regulations Text

§ 424.525 [Corrected]

1. On page 62419, second column, in §424.525, amendatory instruction 7b. is corrected to read as follows:

"b. In--

i. Paragraphs (a)(2) and (b) by removing the phrase "prospective provider" and adding the word "provider" in its place; and

ii. Paragraph (a)(3) by removing the phrase "prospective institutional provider" and adding the phrase "institutional provider" in its place; and".

Karuna Seshasai,

Executive Secretary to the Department,

Department of Health and Human Services.